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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128

REPLY COMMENTS ON THE PETITIONS FOR RECONSIDERATION

The Consumer-Business Coalition for Fair Payphone-800 Fees ("Consumer-Business Coalition"),[1/] by its attorneys and pursuant to 47 C.F.R. § 1.429, hereby submits its reply comments on the petitions for reconsideration of the Commission's Second Report and Order[2/] filed in the above-captioned proceeding. The Consumer-Business Coalition agrees with those comments that indicate that because there is no meaningful competition in the payphone marketplace, the Commission erred in adopting a "market-based" surrogate for payphone 800 calls. The Consumer-Business Coalition instead urges the Commission to implement an incremental cost-based approach for pricing such calls so that the per-call compensation rate is equitable for all payphone users.

1/ The Consumer-Business Coalition's members include: the American Trucking Associations, Air Transport Association of America, Consumer Federation of America, AAA, National Network to End Domestic Violence, Truckload Carriers Conference, American Moving and Storage Association, Transportation Intermediaries Association, American Airlines, Nabisco, Inc., Motel 6 Operating L.P., Virtual Voice Corporation, Small Business Legislative Council, and International Communications Association.

2/ In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Second Report and Order, FCC 97-371 (rel. Oct. 9, 1997) ("Second Report and Order").

The Telecommunications Act of 1996 ("1996 Act") requires that payphone providers receive "fair compensation for each and every completed intrastate and interstate call."[3/] "Fair compensation" suggests that the rate set for subscriber 800 and access code calls be fair for all involved – payphone service providers ("PSPs"), interexchange carriers ("IXCs"), paging companies, 800-number subscribers, and consumers. The Commission's decision to adopt a "market-based" surrogate for payphone 800 calls in lieu of implementing an incremental cost-based approach falls well short of this expectation. Indeed, with the exception of the independent PSPs and local exchange carriers ("LECs"), most of the comments filed in this proceeding indicate that the Commission's approach generates a huge windfall for payphone providers at the expense of other parties.[4/] Until there is point of sale competition in the payphone marketplace, the adoption of anything other than an incremental cost-based rate will

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3/ 47 U.S.C. § 276(b)(1)(A).

4/ See, e.g., Comments of AT&T Corp. in CC Docket No. 96-128 (filed Jan. 7, 1998) ("AT&T") at 2-3; Comments of MCI Telecommunications Corp. in CC Docket No. 96-128 (filed Jan. 7, 1998) ("MCI") at 2-3. Peoples Telephone Company attempts to refute the claim that PSPs are receiving a windfall by illustrating its poor earnings for the quarter ending September 30, 1997. Comments of Peoples Telephone Company in CC Docket No. 96-128 (filed Jan. 7. 1998) ("Peoples") at 6. Only three weeks before filing its comments, however, Peoples spent more than $11 million to acquire approximately 2,600 public pay phones from Indiana Telecom of Indianapolis, Indiana. See "Peoples Telephone Company Announces Pay Telephone Acquisition," Business Wire, December 15, 1997 (copy attached as Exhibit A). It would be quite unusual for Peoples to invest $11 million of new capital in a business earning, in its opinion, below market returns on investment. Moreover, Peoples' unaudited interim financial statements, which it attached as an exhibit to its comments, do not support Peoples' contentions of poverty or inadequate return on investment. On an operating cash flow basis, adjusting for interest, depreciation, amortization, taxes, and extraordinary non-recurring items (a common method of evaluating the operating performance and market value of independent payphone companies), Peoples generated $6,691,000 of operating cash flow in its quarter ending September 30, 1997, compared to $4,395,000 of operating cash flow earned in its quarter ending September 30, 1996. These healthy results do not even reflect the 40 percent increase in coin revenues that Peoples is collecting during its current quarter, and will continue to collect hereafter.

perpetuate this imbalance, causing an increase in prices from which businesses and consumers will be hard pressed to recover.

The Consumer-Business Coalition wholly agrees with AT&T Corp. ("AT&T") that compensation for subscriber 800 and access code calls should be determined using a bottom-up approach based on forward-looking efficient costs.[5/] Notwithstanding the Commission's claims that the adoption of a "market-based" surrogate is appropriate due to ease of entry and exit and the "potential" for competition in the payphone marketplace,[6/] basing new rates on prevailing market rates is only appropriate when real competition exists. Contrary to the claims of the payphone providers,[7/] the fact that various PSPs can be found throughout the country does not mean that there is a competitive payphone marketplace. End users today have no choice of payphone providers on a location-by-location basis and, in that sense, the payphone market is analogous to the local exchange market. Indeed, the American Public Communications Council's ("APCC's") statement that "a marketplace of over two million payphones maintained by countless providers across every community in the nation" differentiates the payphone market from the local exchange market completely misses the point.[8/] The fact that "countless [payphone] providers" exist throughout the nation is irrelevant if, in every location, callers are

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5/ See Comments of AT&T at 8; see also Comments of MCI at 1-3; Comments of Sprint Corporation in CC Docket No. 96-128 (filed Jan. 7, 1998) ("Sprint") at 3.

6/ Second Report and Order at ¶ 9.

7/ See Comments of Peoples at 5-6; but cf. Comments of Telecommunications Resellers Association in CC Docket No. 96-128 (filed Jan. 7, 1998) ("TRA") at 6 (stating that it is the Commission's misperception of the payphone market that has led it to reject forward-looking, economic pricing).

8/ Comments of APCC in CC Docket No. 96-128 (filed Jan. 7, 1998) ("APCC") at 33.

limited to the service of only one payphone provider and have no choice but to pay the rate that payphone commands.

In arriving at the default per-call compensation rate of $0.284, the Commission merely backed out certain coin-specific costs from the purported deregulated local coin rate of $0.35.[9/] The Consumer-Business Coalition agrees with AirTouch Paging ("AirTouch"), RCN Telecom Services, Inc. ("RCN"), and US Xchange, L.L.C. ("US Xchange") that, in doing so, the Commission failed to adequately justify its use of the local coin rate as the starting point for the coinless rate.[10/] As several parties explain,[11/] a caller making a coin call is presented with the option of depositing $0.35 into payphone in order to make the call. The 800 subscriber or other party saddled with the coinless rate, however, has no choice as to whether the call is placed. A caller dialing an 800 number from a payphone has no incentive to search out the least expensive payphone (if there were actually an alternative payphone available) to make that call. This absence of market discipline on the part of the calling party distinguishes noncoin calls from local coin calls and further explains why the adoption of a market surrogate was inappropriate in this case.

The Commission's allowance for a call blocking option does little to help rectify this inequity. As explained by RCN and US Xchange, call blocking ultimately reduces the number of

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9/ See Second Report and Order at ¶ 42.

10/ See Comments of AirTouch in CC Docket No. 96-128 (filed Jan. 7, 1998) ("AirTouch") at 7-8; Comments of RCN and US Xchange in CC Docket No. 96-128 (filed Jan. 7, 1998) ("RCN and US Xchange") at 2.

11/ Comments of Ad Hoc Telecommunications Users Committee in CC Docket No. 96-128 (filed Jan. 7, 1998) ("Ad Hoc") at 3-4; Comments of Mobile Telecommunications Technologies Corp. in CC Docket No. 96-128 (filed Jan. 7, 1998) at 3-4; Comments of TRA at 4.

payphones available to end users to dial 800 numbers.[12] Call blocking is therefore not a feasible business option for IXCs, paging companies, and 800 subscribers because their customers or employees rely upon being able to access their services from all telephones, including payphones.[13] To claim that these companies have leverage over the PSPs to negotiate a fair compensation rate through call blocking is therefore inaccurate. Moreover, small businesses have even less leverage in negotiating lower compensation rates because they do not generate as much traffic as the larger carriers. Thus, the Commission's call blocking alternative is no more than a straw man for the bulk of 800-number users.

In light of the inappropriateness of the Commission's decision to adopt a "market-based" surrogate for coinless calls, the PSP claim that the per-call compensation rate should be increased rings hollow.[14] First, the APCC's suggestion that the Commission should consider using other price surrogates such as 0+ commission levels, 0- transfer rates, and sent paid toll charges to calculate the coinless rate is absurd.[15] Under the analysis of the Second Report and Order, these surrogates would potentially raise the price of a noncoin call to as much as $1.99.[16] The PSPs' claims are clearly unreasonable in light of the significantly lower costs that they incur in providing payphone service, and can only be intended to divert the Commission's attention away

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12/ Comments of RCN and US Xchange at 3 ("the likely effect of such blocking will be to limit public access to payphones.")

13/ Comments of Ad Hoc at 6 ("[i]n many cases, the industries affected by this cost increase and their customers *rely* on the fact that the toll free numbers may be accessed from all telephones, including public pay telephones.")

14/ See, e.g., Comments of Communications Central, Inc. in CC Docket No. 96-128 (filed Jan. 7, 1998) at 1-2; Comments of Peoples at 3-5; Comments of RBOC/GTE/SNET Coalition in CC Docket No. 96-128 (filed Jan. 7, 1998) ("RBOC/GTE/SNET Coalition") at 10-15.

15/ Comments of APCC at 14-19.

16/ See id.

from what has become the real issue in this proceeding: the overcompensation of payphone providers.

As evidenced by the SBC cost data that AT&T previously introduced in this proceeding, the costs incurred by PSPs are not nearly as high as they claim.[17/] In an attempt to shield PSPs from such criticism, the APCC suggests that the SBC cost study is "unreliable" because it was prepared when the carrier was trying to sell its payphone affiliate. According to the APCC "SBC had every reason to minimize and distort its true costs."[18/] In addition to the ethical considerations this statement raises, the APCC's position accentuates the need for the Commission to conduct a bottom-up study, as that is the only accurate means through which the true cost of providing payphone service can be determined.

Finally, contrary to the claims of the payphone providers, concerns about fraud are highly relevant to this proceeding.[19/] Despite the pledge of the RBOC/GTE/SNET Coalition to "stand ready to do whatever it can" to prevent and punish payphone fraud,[20/] this pledge, and others like it, are not sufficient to forestall such abuses from occurring. As has already been illustrated by others in this proceeding,[21/] an artificially high "market-based" price for noncoin calls will create additional incentives for some to abuse the per-call compensation system. More importantly,

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17/ See AT&T Petition for Reconsideration in CC Docket 96-128 (filed Dec. 1, 1997) at 15; see also Comments of the Consumer-Business Coalition in CC Docket No. 96-128 (filed January 7, 1998) at 5; Comments of MCI at 3-9; Comments of AirTouch at 7-10.

18/ Comments of APCC at 30.

19/ See RBOC/GTE/SNET Coalition at 9, ft. 7.

20/ See id.

21/ See Dispatching Parties Petition for Reconsideration (filed December 1, 1997) at 3 (indicating that, over the course of seven days, approximately 500 fraudulent calls were made to one 800-number alone after the $0.284 rate was implemented).

because of the high volume of 800 traffic that originates from payphones, it will be extremely difficult for IXCs and 800 subscribers to identify and ferret out such fraud. The potential for such abuses therefore presents an additional reason for the Commission to rethink its payphone decision.

CONCLUSION

For the reasons stated above, the Commission should reevaluate its decision to adopt a "market-based" surrogate for subscriber 800 and access code calls, and should instead implement an fair incremental cost-based standard that, based on the information already contained in the record, will yield a per-call compensation rate of no more than $0.06.

Respectfully submitted,

THE CONSUMER-BUSINESS
COALITION FOR FAIR PAYPHONE-
800 FEES

Howard J. Symons
Sara F. Seidman
Yaron Dori
Mintz, Levin, Cohn, Ferris
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2608
(202) 434-7300

Daniel R. Barney
Robert Digges, Jr.
ATA Litigation Center
2200 Mill Road
Alexandria, VA 22314-4677
(703) 838-1865

Its attorneys

AMERICAN TRUCKING ASSOCIATIONS

/s/
Daniel R. Barney
Senior Vice President and General Counsel

AIR TRANSPORT ASSOCIATION OF AMERICA

/s/
James L. Casey
Vice President and Deputy General Counsel

CONSUMER FEDERATION OF AMERICA

/s/
Dr. Mark N. Cooper
Research Director

AAA

/s/
James A. Kolstad
Vice President, Public and Government Relations

NATIONAL NETWORK TO END DOMESTIC VIOLENCE

/s/
Donna F. Edwards
Executive Director

TRUCKLOAD CARRIERS ASSOCIATION

/s/
Lana R. Batts
President

AMERICAN MOVING AND STORAGE ASSOCIATIONS

/s/
Joseph M. Harrison
President

TRANSPORTATION INTERMEDIARIES ASSOCIATION

/s/
Robert A. Voltmann
Executive Director and CEO

NABISCO, INC.

/s/

Orest R. Fiume
Senior Director, Network Services and Workgroup Technologies

AMERICAN AIRLINES, INC.

/s/

William K. Ris, Jr.
Vice President, Government Affairs

MOTEL 6 OPERATING L.P.

/s/

Dan D. Gilligan
Vice President, Utilities/Telecommunications

VIRTUAL VOICE CORPORATION

/s/

Monte A. Stern
President

SMALL BUSINESS LEGISLATIVE COUNCIL

/s/

John Satagaj
President

INTERNATIONAL COMMUNICATIONS ASSOCIATION

/s/

Brian R. Moir
Moir & Hardman
2000 L Street, N.W., Suite 512
Washington, DC 20036-4907
(202) 331-9852

Its Attorney

Dated: January 20, 1998

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ATTACHMENT A

Press Releases

December 15, 1997

Peoples Telephone Company Announces Pay Telephone Acquisition

MIAMI--(BUSINESS WIRE)--Dec. 15, 1997--Peoples Telephone Company, Inc. (AMEX:PHO) announced today that it has reached a definitive agreement to acquire the pay telephone assets of Indiana Telcom Corporation, Inc. for a cash purchase price of approximately $11,200,000, subject to adjustments for the actual number of phones acquired.

Indiana Telcom, based in Indianapolis, Indiana, operates approximately 2,600 public pay telephones, located primarily in Indiana and adjacent Midwestern states. The transaction is anticipated to be completed in January 1998.

E. Craig Sanders, President and Chief Executive Officer of Peoples Telephone, commented, "We are excited about this addition to the Peoples Telephone network of over 40,000 pay telephones. This agreement complements our strategy of balancing internal sales with acquisitions to achieve consistent and well managed growth for our company, which will exceed 10% in 1997 based on the net increase in installed pay telephones. We believe that Indiana Telcom has built a quality operation that fits well with Peoples Telephone's emphasis on operational excellence. Their routes are a good overlay on our existing route structure that will build density in our field operations and should allow us to realize synergies."

Mr. Sanders continued, "This is Peoples Telephone's first acquisition in over three years and reflects our careful consideration of augmenting a year of strong internal growth with additional well-valued phones. As a major independent payphone provider in Indiana with a loyal customer base, we believe that the Indiana Telcom operation represents a solid platform for future growth. This acquisition is another key step along the path of returning our company to profitability."

Peoples Telephone Company, Inc. is a leading independent provider of public pay telephone services and value-added services to the public communications industry. The Company currently owns and operates over 40,000 public pay telephones nationwide and provides value-added services to more than 15,000 additional pay telephones throughout the United States.

NOTE: Statements in this news release relating to matters that are not historical facts are forward-looking statements. Such forward-looking statements involve known and unknown risks, uncertainties and other factors, which may cause the actual results, performance or achievements of Peoples Telephone Company, Inc. to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Such known and unknown risks, uncertainties and other factors include, but are not limited to, the following: the impact of competition especially in a deregulated environment (including the ability of the Company to implement higher market-based rates for local coin calls), uncertainties with respect to the implementation and effect of the Telecommunications Act of 1996 including any new rule making by the

Federal Communications Commission ("FCC") or litigation which may seek to modify or overturn the FCC's orders implementing such act or portions thereof, the ongoing ability of the Company to deploy its public pay phones in favorable locations, the Company's ability to continue to implement operational improvements, and the ability of the Company to efficiently integrate acquisitions of other telecommunication companies. Such factors and others are set forth more fully in the Company's Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, and Current Reports on Form 8-K filed with the Securities and Exchange Commission.

CONTACT: Peoples Telephone Company, Inc., Miami
E. Craig Sanders, Chief Executive Officer
305/593-9667, ext. 106
or
William A. Baum, Chief Financial Officer
305/593-9667, ext. 118

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CERTIFICATE OF SERVICE

I, Tanya Butler, certify that on this 20th day of January, 1998, a copy of the foregoing "Reply Comments on the Petitions for Reconsideration" was served on the following parties by either U.S. Mail or messenger (indicated by an "*"):

Tanya Butler

Tanya Butler

Magalie Roman Salas*
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

A. Richard Metzger*
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Kurt A. Schroeder*
Chief, Enforcement Division
Federal Communications Commission
Common Carrier Bureau
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Thomas Power*
Legal Advisor to Chairman Kennard
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Mary McManus*
Legal Advisor to Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Rick Chessen*
Legal Advisor to Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W, Room 826
Washington, D.C. 20554

Kevin Martin*
Legal Advisor to Commissioner Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Kyle D. Dixon*
Legal Advisor to Commissioner Michael Powell
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Jim Casserley*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Michael Carowitz*
Legal Advisor, Enforcement Division
Federal Communications Commission
Common Carrier Bureau
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Rose M. Crellin*
Enforcement Division
Common Carrier Division
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Mark C. Rosenblum
Richard H. Rubin
AT&T
295 North Maple Ridge Avenue
Room 325213
Basking Ridge, NJ 07920

Greg Lipscomb*
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Judith St. Ledger-Roty
Kelley Drye & Warren, LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
(On behalf of Paging Network, Inc.)

ITS*
2100 M Street, N.W.
Room 246
Washington, D.C. 20554

Ian D. Volner
Heather L. McDowell
Venable, Baetjer, Howard & Civiletti, LLP
1201 New York Avenue, N.W., Suite 1000
Washington, D.C. 20005
(On behalf of Direct Marketing Association)

Alan S. Tilles
Meyer, Faller, Weisman & Rosenberg
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015
(On behalf of Dispatching Parties)

Thomas Gutierrez
J. Justin McClure
Lukas, McGowan, Nace & Gutierrez
1111 19th Street, N.W., Suite 1200
Washington, D.C. 20036
(On behalf of Mobile Telecom. Tech.)

Phillip L. Spector
Patrick S. Campbell
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L Street, N.W.
Washington, D.C. 20036
(On behalf of PageMart Wireless, Inc.)

Michael K. Kellogg
Kevin J. Cameron
Aaron M. Panner
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1301 K Street, N.W., Suite 1000 West
Washington, D.C. 20005
(On behalf of RBOC/GTE/SNET Coalition)

David L. Hill
Audrey P. Rasmussen
O'Connor & Hannan, LLP
1919 Pennsylvania Avenue, N.W., Suite 800
Washington, D.C. 20006
(On behalf of Source One Wireless II, LLC)

Bruce W. Renard
General Counsel
Peoples Telephone Company, Inc.
2300 N.W. 89th Place
Miami, FL 33172

Mary J. Sisak
Mary L. Brown
MCI Telecommunications Corp.
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

James S. Blaszak
Janine F. Goodman
Levine, Blaszak, Block & Boothby, LLP
2000 K Street, N.W., Suite 600
Washington, D.C. 20006
(On behalf of the Ad Hoc Telecommunications Users Comm.)

Albert H. Kramer
Robert F. Aldrich
Dickstein, Shapiro, Morin & Oshinsky, LLP
2101 L Street, N.W.
Washington, D.C. 20037
(On behalf of APCC)

Eric L. Bernthal
Michael S. Wroblewski
Latham & Watkins
1001 Pennsylvania Avenue, N.W., Suite 1300
Washington, D.C. 20004
(On behalf of Peoples Telephone Company, Inc.)

Joseph Kahl
Pamela Hintz
RCN Telecom Services, Inc.
105 Carnegie Center
Princeton, NJ 08540

Carl W. Northrop
E. Ashton Johnston
Paul, Hastings, Janofsky & Walter, LLP
1229 Pennsylvania Ave., N.W., 10th Floor
Washington, DC 20004-2400
(On behalf of Air Touch Paging)

Bob Buick
US Xchange, L.L.C.
20 Monroe, N.W., Suite 450
Grand Rapids, MI 49503

Frederick M. Joyce
Joyce & Jacobs
1019 19th Street, N.W.
14th Floor, PH-2
Washington, DC 20036
(On behalf of Metrocall, Inc.)

C. Joel Van Over
Pamela S. Arluk
Swidler & Berlin, Chtd.
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(On behalf of RCN and US Xchange)

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
1850 M Street, N.W., 11th Floor
Washington, D.C. 20036

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W., Suite 701
Washington, D.C. 20006
(On behalf of TRA)

Mark A. Stachiw
Vice President & Senior Counsel
AirTouch Paging
12221 Merit Drive, Suite 800
Dallas, Texas 75251

Barry E. Selvidge
Vice President, Regulatory Affairs and
General Counsel
Communications Central, Inc.
1150 Northmeadow Parkway, Suite 118
Roswell, Georgia 30076

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